

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
FAZAL AHMAD, P.C.		: DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1981	:	
and 1982.		

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Petitioner, Fazal Ahmad, P.C., 4200 Avenue K, #3G, Brooklyn, New York 11210, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1981 and 1982 (File No. 806595).

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on May 1, 1990 at 9:15 A.M., with all documents submitted by June 1, 1990. Petitioner appeared by its president, Fazal Ahmad, M.D. The Division of Taxation appeared by William F. Collins, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether petitioner properly substantiated certain deductions taken for the tax years ended December 31, 1981 and December 31, 1982.

II. Whether petitioner should be allowed to offset additional taxes assessed by the Division of Taxation with net operating losses carried forward from previous years or carried back from subsequent years.

FINDINGS OF FACT

On August 28, 1985, the Division of Taxation issued to petitioner, Fazal Ahmad, M.D., P.C., a Notice of Deficiency for the period ended December 31, 1981 which set forth additional tax due of \$6,471.00, interest of \$3,474.00 and penalty of \$3,236.00, for a total amount due of \$13,181.00. On the same date, the Division of Taxation issued to Fazal Ahmad, M.D., P.C. a

second Notice of Deficiency for the period ended December 31, 1982 setting forth tax due in the sum of \$6,839.00, interest of \$2,228.00 and penalty of \$3,420.00, for a total amount due of \$12,487.00.

Prior to the issuance of the notices of deficiency, on June 7, 1985, the Division of Taxation issued to Fazal Ahmad, M.D., P.C. a Statement of Franchise Tax Audit Changes which explained the additional taxes as follows:

<u>"Explanation</u>	<u>1981</u>	<u>1982</u>
Revision of AU-251.6 of 1.14.85 Based upon an audit, your Franchise Tax has been recomputed as follows:		
Repairs	\$ 2,736.	
Bad debts	16,695.	\$ 3,842.
Rents	3,970.	2,850.
Depletion	5,294.	
Advertising	4,057.	4,675.
Salaries	372.	
Pension	(3,940.)	1,720.
Depreciation	9,850.	2,550.
Other deductions	47,054.	59,052.
Net adjustment	86,088.	74,689.
Taxable income as reported '81 as corrected	(18,880.)	3.
Corrected taxable income	67,208.	74,692.
Tax at 10%	6,721.	7,469.
Minimum tax - franchise tax	6,721.	7,469.
Net tax	6,721.	7,469.
Tax previously paid '81 as adjusted by Albany	250.	630.
Tax due	6,471.	6,839.
Penalties [Tax Law §] 1085(e)	3,236.	3,420.
Interest	3,213.	1,991.
Total due	12,920.	12,250."

After further substantiation was provided by petitioner at conference, a Conciliation Order was issued on November 23, 1988 wherein the total deficiency for the years 1981 and 1982 was reduced to \$5,504.00 and minimum interest. The penalty was cancelled.

In arriving at that figure, a recomputation of the tax and balance due was calculated by the Division of Taxation, a summary of which is as follows:

"Recomputation of Tax and Balance Due

	<u>1981</u>	<u>1982</u>
Taxable income per previous assessment	\$67,208.00	\$74,692.00
Less: adjustment per Conciliation and Mediation	37,727.00	40,308.00
Corrected taxable	29,481.00	34,384.00
Franchise tax - 10% of corrected taxable income	2,948.00	3,438.00
Less: tax previously paid per return	<u>250.00</u>	<u>630.00</u>
Balance	2,698.00	2,806.00
Add: interest as of 9/26/88	<u>2,789.52</u>	<u>2,118.12</u>
Total due	5,487.52	4,924.12"

This reduction of the deficiency was a result of a reexamination of disallowed deductions for the years 1981 and 1982. The following chart indicates the Division's review of the substantiating documentation produced by petitioner at conference:

"Re-examination of disallowed deductions -  
(substantiation of documents)

Year Ended 12/31/81:

Name of <u>Deductions</u>	Per Tax <u>Return</u>	Per <u>Re-examination</u>	<u>Dis-allowed</u>	Remarks for <u>Disallowance</u>
Repairs	3030	294	2736	documents were personal expenses.
Bad Debts	16695	4750	11945	Falsification of documents to claim medicaid was denied.
Depletion	5294	0	5294	Old medicine expired were already deducted previously as supplies expense.
Auto Expense	2282	0	2282	No documents.
Gifts	793	300	493	Dis-allowed - personal exp.
Cleaning	3131	611	2520	Not sufficient doc.
Loans	1670	0	1670	To pay taxes are not deductible.
Legal & Professional fees	5021	0	5021	Check issued were personal and does not work in office
Meals	3950	0	3950	Regular lunch and dinners in office - personal exp.

Printing	1735	500	1235	No documents
Supplies	3193	2892	301	Not documented
Travel & Entertainment	2718	0	2718	No diary & Personal Exp.
Casualty Loss	5486	3090	2396	Not deductible losses.
Transportation	<u>4800</u>	0	<u>4800</u>	Personal expenses
Total Deduction Disallowed			48361	
Year Ended <u>12/31/82</u> :				
Bad Debts	3842	0	3842	Non-deductible
Rent	13303	12750	553	No documents
Gifts	1000	125	875	Personal disbursements
Insurance	5875	4575	1300	Paid to Life Insurance Policy
Loans	5090	0	5090	Not deductible [illegible]
Meals	3876	0	3876	Lunch & dinner disallowed
Temporary help	10425	7209	3216	No documents
Travel & Entertainment	997	0	997	" "
Transportation	4800	0	4800	" "
Depreciation	2550	1550	1000	Corrected computation
Casualty Loss	7411	4650	2761	Not deductible [illegible]
Printing	2760	0	2760	No documents
Supplies	1215	0	1215	" "
Auto Expense	1896	0	<u>1896</u>	No documents & diary
Total Disallowed			<u>34387</u> "	

Petitioner produced various items of substantiating documentation for the deductions taken in the year 1981, but never submitted any documentation with regard to the year 1982, even though allowed time after hearing to do so. Additionally, petitioner produced no evidence of the corporation's dissolution, although asserted by petitioner at hearing, and despite the fact that petitioner was given an ample amount of time to produce proof of same.

With regard to the year 1981, petitioner produced essentially the same information it produced to the Division's auditor at the conciliation conference. Indeed, petitioner's president stated that the documentation presented at hearing was the same produced at conference. The only difference found in the items produced at hearing was substantiation of \$432.96 in repair bills and personal checks paid to Khan's Plumbing & Heating Supplies by petitioner in that amount. As noted above, petitioner was allowed only \$294.00 in repair expenses by the Division in its reexamination of the substantiating documentation produced at conference.

Petitioner claimed no net operating loss deduction on its U.S. corporation income tax returns for the years 1984, 1983, 1982 and 1981. Additionally, it is noted that although there

were losses for the years 1979 and 1980, as reflected on the U.S. corporation income tax returns filed on behalf of Fazal Ahmad, P.C., no net operating losses were carried forward from those years to the years 1981 and 1982. Likewise, although there were losses indicated on the Federal corporation income tax returns for the years 1983 and 1984, no net operating loss carrybacks were claimed for 1981 or 1982.

#### SUMMARY OF THE PARTIES' POSITIONS

Petitioner contends that it has further substantiated deductions taken in the year 1981 and that further allowances for said deductions should be made. Additionally, petitioner points out the large losses for years both prior and subsequent to 1981 and 1982 and urges that those losses be carried forward or back to cancel the additional taxes found due for the years 1981 and 1982. Finally, petitioner contends that the corporation was dissolved and owed no taxes for the years in issue.

The Division counters petitioner's arguments by stating that it has not shown any further substantiation of the deductions for the years 1981 and 1982, that it has not shown that the corporation was dissolved or that petitioner is entitled to carry forward or back net operating losses to the years in issue.

#### CONCLUSIONS OF LAW

A. With respect to the issue of substantiation of deductions for the year 1981, it must be pointed out that Tax Law § 1089(e) and the regulation at 20 NYCRR 3000.10(d)(4) place the burden of proof in this matter on petitioner. Petitioner has shown only that it is entitled to a small allowance with regard to its "repairs" deduction for the year ended December 31, 1981 (see, Finding of Fact "4", supra). With regard to other records produced at hearing, petitioner was unable to distinguish those records from records shown to the Division of Taxation on audit and at conference and, in fact, petitioner made admissions at hearing that the documentation was identical. The documentation provided at hearing could not be specifically identified and correlated with those deductions taken on the New York State Corporation Tax Report for the period ended December 31, 1981. Although the Tax Appeals Tribunal has held that where a

taxpayer can establish that some expense was incurred an allowance may be based on an estimate (see, Matter of Coleman, Tax Appeals Tribunal, May 18, 1989), the absence of supporting records will "'bear heavily' against the taxpayer 'whose inexactitude is of his own making'" (see, Olken v. Commissioner, 41 TCM 1255, 1257, quoting Cohan v. Commissioner, 39 F2d 540, 544; see also, Matter of Jack Eisner, Tax Appeals Tribunal, March 22, 1990). Since petitioner did not add anything to the documentation produced to the Division of Taxation (with the exception of the "repair" documentation above), the reasons for the Division's disallowance of said deductions remain valid and proper.

With regard to the year ended December 31, 1982, petitioner failed to submit any documentation with regard to deductions taken for that year and therefore the assessment, as revised at conference, is sustained.

B. Petitioner provided no documentation or other proof that the corporation had been dissolved during the period in issue and therefore tax will not be abated for that reason.

C. Tax Law § 208.9(f) provides, in part, as follows:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four....

\* \* \*

(3) such deduction shall not exceed the deduction for the taxable year allowable under section one hundred seventy-two of the internal revenue code...." (Tax Law § 208.9[f]; see also 20 NYCRR 3-8.1.)

In the instant matter, petitioner did not claim any net operating loss deduction for either the year ending December 31, 1981 or December 31, 1982. Nor did petitioner offer any explanation for the losses sustained in the alleged source years, i.e. 1979, 1980, 1983 or 1984.

In Matter of Alvin Gottesman (Tax Appeals Tribunal, August 25, 1988) it was held that:

"The regulations and case law establish that the amount of the net operating loss deduction for State purposes cannot exceed the amount deducted on the Federal tax return for the corresponding year. (20 NYCRR 3-8.2[d]; Matter of Telmar Communications Corp. v. Procaccino, 48 AD2d 189; Matter of Lehigh Valley Industries, Inc., Tax Appeals Tribunal, May 5, 1988.) Further, the source year of the net operating loss deducted on the State return must be the same as that of the net operating loss deducted on the Federal return (Matter of Lehigh Valley Industries, Inc., supra). Petitioner, Gotte's Luncheonette, Inc., did not prove the

amount of the net operating loss deduction claimed by it for Federal tax purposes for the years 1978 and 1979, nor the source years of such deduction. Therefore, we reverse the Administrative Law Judge's determination permitting the petitioner, Gotte's Luncheonette, Inc., to carry back the net operating losses of 1981 and 1982 to 1978 and 1979."

Since petitioner herein did not prove the amount of the net operating loss deduction claimed by it for Federal tax purposes for either 1981 or 1982 it is not entitled to the deduction for New York purposes.

D. The petition of Fazal Ahmad, P.C. is hereby granted to the extent set forth in Conclusion of Law "A", but in all other respects is denied and the notices of deficiency issued on August 28, 1985, as modified by the Conciliation Order dated November 23, 1988, are sustained.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE